

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3152 OF 2006**

1.Ejaj Papabhai Inamdar and anr .. Petitioners.
(Orig.Plffs)

Vs

1.Digambar Sambhaji Vanave and ors .. Respondents
(Orig.Defts)

Mr K.V.Saste, for the petitioners.

Mr A.V.Anturkar i/b Mr S.B.Deshmukh, for respondent nos
1 to 6.

Mr Tanaji Mhatugade, for respondent nos 7 to 12.

**CORAM : D.B.BHOSALE, J.
DATE : 26.09.2006**

PC:

1. Heard the learned counsel for the parties.

2. This petition is directed against the concurrent findings recorded by the courts below in the proceedings arising from Exhibit-5-application filed by the petitioners in their regular Civil Suit No.106 of 2005. In the present writ petition, the parties are concerned only with land Gat No.331/1, admeasuring 172 Ares, i.e. the property described at sr.no.1 in the plaint, hereinafter referred to as "the said land". The petitioners claim that they purchased 1/3rd undivided share in the said land in 1974, whereas respondent nos 1 to 6 claim that they purchased 80 Ares on the northern side of the said land. Both the sale deeds form part of

the record. On perusal of the documents on record, it is clear that respondent nos 1 to 6, after they purchased 80 Ares of land, constructed the boundary wall and they claim that they are in exclusive possession thereof. Similarly, the remaining portion of the land, bounded by barbed wire, is in possession of the plaintiffs. Against this backdrop, Mr Saste, learned counsel for the petitioners, submits that since the petitioner no.1 purchased the undivided share in the said land, respondent nos 1 to 6 cannot claim exclusive possession in respect of a particular portion (i.e. Northern) of the said land out of 172 Ares. Both the courts below, after having considered the sale deeds and other material placed on record and in particular the statement of petitioner no.1 in the proceedings under the Land Revenue Code, referred to by the courts below in the impugned order, have concurrently held that the petitioners and respondent nos 1 to 6 are in exclusive possession of the respective portions of the said land in their possession. The case set up by the petitioners that there was no partition has not been accepted by the courts below.

3. It is well settled that this Court is not expected to re-assess the material and seek to reach the conclusion different from the one reached by the courts

below, if one reached by the courts below was reasonably possible. If the discretion has been exercised reasonably and in judicial manner, the fact that this court can take a different view may not justify interference with the discretion exercised by the courts below. In the present case, I am satisfied that the findings recorded by the courts below are reasonable. Considering that there are concurrent findings recorded by the courts below and as I find that there is sufficient material on record to sustain those findings and considering the extremely limited jurisdiction of this Court under Article 227 of the Constitution of India to disturb the finding of facts the present writ petition cannot be entertained. In my opinion, interest of justice would be met if respondent nos 1 to 6 are directed to file an undertaking stating that they shall not claim any equities if they ultimately loose in this proceedings. Order accordingly. The undertaking, as aforestated, be filed before the trial Court within one week from the date of receipt of this order. The trial court is directed to dispose of the suit as expeditiously as possible and preferably within a period of eight months from the date of receipt of this order on merits in accordance with law and without being influenced by the observations made in the impugned orders as also in this order. The writ petition stands

disposed of.

(D.B.BHOSALE, J.)